

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 3, 2004**

**IN RE:**

**PETITION FOR APPROVAL OF THE MINIMUM  
WATER RATES FOR THE AREA SERVED BY  
THE HICKORY STAR WATER COMPANY**

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**DOCKET NO.  
04-00044**

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**ORDER GRANTING, IN PART, AND DENYING, IN PART  
HICKORY STAR'S PETITION**

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This matter is before the Hearing Officer for consideration of the Petition of Hickory Star Water Company, LLC for Approval of Minimum Water Rates ("*Petition*") filed on February 10, 2004. A Hearing on the *Petition* was held on July 23, 2004, pursuant to Tenn. Code Ann § 65-5-203. Based upon the record in this docket, the Hearing Officer grants, in part, and denies, in part, the relief sought in the *Petition* as set forth in this Order.

**Background**

Hickory Star Water Company, LLC ("Hickory Star" or the "Company") provides both water and wastewater service to approximately 65 customers near Norris Lake in Union County, Tennessee. Hickory Star is owned by Carlsberg Recreational Properties, Inc., a California corporation that was originally granted a Certificate of Public Convenience and Necessity ("CCN") by the Tennessee Regulatory Authority ("Authority" or "TRA") on November 24, 1999 in Docket No. 99-00485.

On February 10, 2004, Hickory Star filed its *Petition* with the TRA for a rate increase. While no specific revenue request was made by the Company, Hickory Star did propose to

increase its minimum charge from \$18.38 per month to \$36.76 per month for the first 2,000 gallons consumed per month and to increase its tap fee for new customers from \$585 to \$850. In addition, the Company proposed to pass on to its customers any changes in the cost of water paid to its wholesale supplier, the City of Maynardville.<sup>1</sup>

On March 25, 2004, a Petition to Intervene in this matter was filed by the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”). During an Authority Conference held on April 12, 2004, Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones, the voting panel assigned to this docket, voted unanimously to grant intervention to the Consumer Advocate and appoint the Authority’s General Counsel or his designee to act as the Hearing Officer in this matter to make findings of fact and conclusions of law, as necessary, and to render an initial decision on the merits of the *Petition*, pursuant to Tenn. Code Ann. § 4-5-301 and § 65-2-111 and such other legal authority as may be provided by law.<sup>2</sup>

Data Requests to the Company were issued by the TRA on February 13 and April 2, 23 and 28, 2004. The Hearing Officer issued an Order on May 4, 2004 establishing a procedural schedule and setting a Hearing date of June 25, 2004. The Consumer Advocate and the Company engaged in discovery pursuant to the procedural schedule. The Company provided information and documentation in support of its *Petition* through responses to the Data Requests issued by the Authority and discovery propounded by the Consumer Advocate. The procedural schedule was later modified and the Hearing date was moved to July 23, 2004 at the request of the parties.<sup>3</sup> A separate Notice of Hearing was issued on July 15, 2004.

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<sup>1</sup> See *Petition*, Exhibit III and Exhibit IV (February 10, 2004).

<sup>2</sup> See *Order Convening A Contested Case Proceeding, Granting Intervention and Appointing A Hearing Officer* (May 18, 2004).

<sup>3</sup> See *Order Amending Procedural Schedule Resetting Hearing* (June 23, 2004).

On June 17, 2004, the Direct Testimony of William W. Geary, Jr. was submitted on behalf of the Company. Mr. Geary testified that a rate increase is necessary because the Company has sustained losses throughout its entire history and now has a need to install new water lines. Mr. Geary also proposed certain changes to the Company's *Petition*, including the adoption of a Uniform System of Accounts required by the TRA, a change in depreciation rates, and the elimination and refund of an administrative fee charged by the Company that was not previously approved by the TRA. On June 28, 2004, the Company filed the supplemental direct testimony of Mr. Geary. The Consumer Advocate did not submit any pre-filed testimony.

On July 21, 2004, Hickory Star filed the Company's proof of publication showing the increase of rates and the time and place of the Hearing. On July 22, 2004, the Consumer Advocate filed a *Stipulation and Agreement Between Hickory Star Water Company, LLC and the Consumer Advocate & Protection Division of the Office of the Attorney General* ("Stipulation") with the Authority. Among other things, the Stipulation states that the Consumer Advocate does not object to the rate increase sought by Hickory Star. The Stipulation also states that the rate increase will produce additional annual revenues of approximately \$14,336 and that this increase is necessary in order for Hickory Star to continue operations and provide service to its customers. According to the Stipulation, Hickory Star will seek advance approval from the TRA for any pass-through of increases in wholesale water rates, and Hickory Star will provide sufficient notice to its customers of any change in wholesale water rates.

### **The Hearing**

The Hearing in this docket was held before the Hearing Officer on July 23, 2004. The following parties participated in the Hearing through their respective counsel:

Hickory Star Water Company -- **LaDon Baltimore, Esq.**, Farrar & Bates, L.L.P.,  
211 Seventh Avenue, North, Suite 420, Nashville, TN 37219-1823

Consumer Advocate -- **Shilina Chatterjee, Esq.** and **Timothy Phillips, Esq.**,  
Office of the Attorney General, 426 5<sup>th</sup> Avenue N., 2<sup>nd</sup> Floor, John Sevier  
Building, Nashville, TN 37243

William W. Geary, Jr., President of Carlsberg Management, attended the Hearing as a representative of the Company. Hal Novak, Chief of the Energy and Water Division, and Butch Phillips of the Energy and Water Division, participated in the Hearing as TRA Staff. No one from the public in general appeared at the Hearing.

At the outset of the Hearing, the Consumer Advocate summarized the Stipulation and the terms of agreement between the Parties, after which the TRA Staff asked questions related to the Stipulation. The TRA Staff first asked questions of the Parties regarding the calculation of the \$14,336 revenue increase set forth in the Stipulation. The TRA Staff specifically inquired of the Company whether the Parties had properly accounted for one customer that is billed a flat fee for forty (40) separate lots. After reviewing its records, the Company acknowledged, and the Consumer Advocate agreed, that this particular customer had been counted as only one customer in their analysis and that, after correcting this error, the change in rates would actually produce additional revenues of approximately \$23,000 instead of the \$14,336 contained in the Stipulation.<sup>4</sup> The Parties stated at the Hearing that they would stipulate to the corrected increase in additional revenues, and the Hearing Officer directed that an amended Stipulation be filed by the Parties to reflect this change.

The TRA Staff next questioned the Company as to its proposal for a wholesale water pass-through adjustment. Currently, the Company purchases all of its wholesale water from the City of Maynardville ("City"). Under the Company's proposal and its Stipulation with the

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<sup>4</sup> Transcript of Proceedings, pp. 12-14 (July 23, 2004).

Consumer Advocate, if the City adjusted its rates either up or down, Hickory Star would make a revenue neutral adjustment in its billing rate to capture this cost change. Nevertheless, at the Hearing, the Company admitted that it had not reached a decision as to how it would actually implement such a change.<sup>5</sup>

The TRA Staff then questioned the Company regarding its proposed change in depreciation rates. The Company admitted that it had been using IRS depreciation rates for its property and proposed a new book depreciation rate of four (4.0%) percent. At the Hearing, the Company also proposed to adjust its accumulated depreciation for prior periods on a going-forward basis in order to correct prior errors. The Company acknowledged that it had not requested this treatment in its *Petition* but was asking for it at the Hearing. The Consumer Advocate stated that it had no objection to such a change.<sup>6</sup>

The Company was asked to explain the situation in which it began charging customers a \$2.50 per month administrative fee without first obtaining approval from the TRA. The Company stated that this fee was implemented in order to recover the meter reading costs that it paid to an outside service. The charge was discontinued after the Company learned that it should have first obtained TRA approval to implement such a charge.<sup>7</sup> The Company also stated that it intends to refund all prior collections from this administrative fee back to the customers on the first bill after the Hearing.<sup>8</sup>

Finally, the TRA Staff inquired as to the Uniform System of Accounts used by the Company. The Company admitted that it had not been following the Uniform System of

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<sup>5</sup> *Id* at 23.

<sup>6</sup> *Id* at 25.

<sup>7</sup> *Id* at 27.

<sup>8</sup> *Id* at 27

Accounts prescribed by the TRA, but had every intention of doing so for all filings made for the year 2004.<sup>9</sup>

### **Amended Stipulation**

On July 28, 2004, an *Amended Stipulation and Agreement Between Hickory Star Water Company, LLC and the Consumer Advocate & Protection Division of the Office of the Attorney General* ("Amended Stipulation") was filed with the Authority. The Amended Stipulation states that the change in the minimum water rates from \$18.38 to \$36.76 for the first 2,000 gallons consumed in a month will produce additional annual revenues of approximately \$22,938.24 instead of the \$14,336 that was reflected in the original Stipulation. In addition, the Amended Stipulation also states that the Parties agree to a depreciation rate of four (4.0%) percent on a going-forward basis, and that the Company will not seek retroactive recovery of depreciation expense in prior periods.

### **Findings and Conclusions**

Based upon the record in this docket, the Hearing Officer makes the following findings and conclusions.

#### **Rate Increase**

The evidence presented demonstrates that the Company will continue to experience operating losses even if the requested rate increase is granted in full. Because the Company will continue to be in an operating loss situation, there is no speculation as to an appropriate amount of rate increase. The Hearing Officer **finds** that the amount of rate increase proposed in the Amended Stipulation is just and reasonable and **approves** a change in minimum rates from \$18.38 per month to \$36.76 per month for the first 2,000 gallons consumed per month and an

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<sup>9</sup> *Id* at 28.

increase in the tap fee for new customers from \$585 to \$850. This change in rates will produce additional annual revenue for the Company of approximately \$23,000.

### **Wholesale Water Pass-Through**

The record does not contain sufficient evidence as to how a proposed pass-through in wholesale water rates would function. With the exception of the Company's answers to the TRA Staff's questions during the Hearing, no analysis was provided by the Company which would show the existing wholesale rates that the Company is presently paying, or a formula as to how any change in wholesale water rates would be calculated and applied to the Company's tariff. There is nothing in the record to support a finding that an automatic pass-through of wholesale water rates is a fair and reasonable manner of resolving this issue. For this reason, the Hearing Officer **denies** the Company's request for the wholesale water pass-through as proposed by the Parties at this time.

Notwithstanding the denial of the Company's request, the Hearing Officer invites the Company to propose a wholesale water rate pass-through mechanism as a separate filing, outside of a rate case. At a minimum, such a proposal should include the following:

1. Proof as to the existing wholesale water cost contained in the Company's base rates;
2. A formula to convert wholesale water cost changes into water billing rates;
3. A commitment to file with the TRA thirty days in advance of any proposed change in water rates due to wholesale water cost changes; and
4. A proposal as to how to treat any over or under collected water costs.

### **Depreciation Rates**

Hickory Star's original CCN and the tariff filed therewith established the initial rates charged to customers but did not specify the depreciation rates that the Company should adopt. Such a statement would have made for a more timely recovery of the Company's assets.

Nevertheless, this change is becoming critical as the Company begins to expand its plant for the first time. Through the Amended Stipulation the parties have agreed to a proposed book depreciation rate of four percent (4.0%) on a going-forward basis. The Hearing Officer **finds** this depreciation rate to be reasonable and **approves** a depreciation of four percent (4.0%) going forward.

#### **Unauthorized Application of Tariff Rates**

At the Hearing, the Company admitted that it misapplied a tariff rate to its customers' bills by failing to obtain prior approval from the TRA. From April 2002 through April 2004, the Company overcharged its customers \$3,545 in administrative fees. The Company discontinued this charge and proposes to refund the entire \$3,545 overcollection back to its customers. The Hearing Officer **approves** the Company's proposal to refund \$3,545 to its customers without interest or penalty. The Company, having stated that it will proceed with the refund following the Hearing, shall file with the Authority, in this docket, no later than thirty days from the date of this Order, a letter confirming that all refunds have been made. If the Company determines that it needs to charge customers an administrative fee in the future, the Company will properly file such a request with the TRA for consideration.

#### **IT IS THEREFORE ORDERED THAT:**

1. Hickory Star's request to increase minimum rates from \$18.38 per month to \$36.76 per month for the first 2,000 gallons consumed per month is granted.
2. Hickory Star's request to increase the tap fee for new customers from \$585.00 to \$850.00 is granted.
3. Hickory Star's request for an automatic wholesale water pass-through mechanism is denied.



4. Hickory Star's request for a change in depreciation rates to four percent (4.0%) on a going-forward basis is granted.

5. Hickory Star shall make refunds to customers totaling \$3,545.00 and file with the Authority, no later than thirty (30) days from the date of the Order, written confirmation that such refunds have been made.

6. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.

7. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

8. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry. Thereafter, any party aggrieved by the decision of the Hearing Officer may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

  
J. Richard Collier, Hearing Officer